

12369



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AD/LSC/2017/0154**

Property : **159 Chandlers Drive, Erith DA8 1
LW**

Applicant : **Second Ocean Park Management
Company Limited**

Representative : **Mr Gibson LPC Law as agent for
LMP Law Limited**

Respondents : **Mr Mawuenyegah Fianyo-Adovar
Mrs Kawana Teshion Fianyo-
Adovar**

Representative : **Mr M Fianyo-Adovar**

Type of Application : **Court referral – s27A Landlord and
Tenant Act and Schedule 11
Commonhold and leasehold
Reform Act 2002 – determination
of service charges and
administration charges payable**

Tribunal Members : **Judge John Hewitt
Mr Kevin Ridgeway MRICS**

**Date and venue of
Hearing** : **6 September 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **8 September 2017**

DECISION

The issues before the tribunal and its decisions on them

1. The issues before the tribunal is the obligation of the respondent to pay certain sums claimed by the applicant in court proceedings in claim number D6QZ191M
2. Our decisions on the sums claimed are as follows:

Service charges

Debit balance as at 31.12.2014	£78.31	This has now been paid
On account 01.01.2015	£1,410.00	This has now been paid
On account 01.01.2016	£1,410.00	This has now been paid

Administration charges

22.03.2016	£60.00	Payable by the respondents
25.08.2016	£302.40	Not payable by the respondents
22.06.2016	£762.00	Not payable by the Respondents

Statutory interest

£381.58 + £0.90 per day Referred back to the court

Costs of the court proceedings Referred back to the court

Reasons

Background

3. The applicant is a management company controlled by the long lessees of a residential development. The applicant joined in the leases granted to the lessees and covenanted to provide services. The lessees covenanted to contribute to the costs incurred in doing so.
4. In broad terms, the service charge regime is that:
 - 4.1 The service charge year is the calendar year;
 - 4.2 On 1 January each year the lessee is to pay a sum on account, such sum to be certified by being just and fair;
 - 4.3 At the end of each year the actual expenditure is to be certified by an accountant. Any balancing debit is payable by the lessee within 21 days of after the service of the certified accounts.
5. For a number of reasons, we need not go into, the respondents fell into dispute with the applicant and/or its managing agents and were unable to obtain what they felt to be adequate answers to reasonable requests for information they had requested. Out of frustration they decided to withhold payment of services charges demanded on them in the hope this might encourage the provision of the information sought. As part of the this background evidently earlier proceedings brought by the respondents against the applicant in relation to management matters and management funds were compromised.

6. On 17 February 2017, the applicant commenced court proceedings against the respondents to recover alleged service charge arrears and administration charges said to be payable pursuant to the lease of the subject property. A defence was filed. By an order made 7 April and drawn 21 April 2017 District Judge Smith sitting at the County Court at Dartford made an order that: *“The matter be transferred to the First-tier Tribunal (Property Chamber) in order to ascertain whether any of the charges levied are within their jurisdiction and if so what if any are properly recoverable from the Defendants.”*
7. This tribunal gave directions on 30 May 2017.
8. The matter came on for hearing before us on 6 September 2017. We were provided with a hearing bundle paged numbered 1-403 said to comprise relevant materials.

The issues

Service charges

9. At the hearing, it was confirmed to us by the parties that the three service charges arrears claimed in the proceedings had now been paid in full. All perhaps we need to record is that as a matter of contract law those arrears were payable by the respondents at the time the court proceedings were issued.
10. Whilst the respondents might well have thought they were justified in withholding payment, as a matter of law they were not.

Administration charges

11. Clause 5.9 of the lease is a covenant on the part of the lessee to pay to the landlord and the management company certain costs, charges and expenses incurred in relation to three separate sets of circumstances. Mr Gibson accepted that the first two were not relevant and the claim was based on the third which is in these terms:

“5.9.3 the necessary or attempted recovery of arrears of rent service charge or other sums due from the Tenant”

The sums claimed

12. £60.00 Invoice 22.03.201 issued by PMUK Property Management. A copy is at p230. This clearly relates to the cost of correspondence aimed at collecting the arrears of service charges due and payable at that time. This was not disputed by Mr Fianyó-Adovar.

In these circumstances, we find this charge is payable.

13. £ 302.40 Invoice 25.08.2016 issued by LMP Law. A copy is at p232. This simply records *“159 Chandlers Drive: M Adovar – SC/Breach – RIV0019”*. In an unsigned witness statement dated 26 July 2017 made by LMP Law on behalf of the applicant it simply records at p1127: *“This charge is professional fees for Solicitors dealing with the Respondent’s*

various breaches of lease and accusations made against the Applicant and their Directors. A copy of the invoice is attached." The witness statement is not endorsed with a statement of truth.

14. No breakdown of the fees has been given, no charge-out rate stated and, most importantly, no information as to the 'various breaches' referred to. Reference to 'accusations' appears to be a reference to the court proceedings commenced by the respondents against the applicant which we have referred to above.
15. There is no evidence before us at all that any of these charges concern matters within clause 5.9.3 of the lease, namely to recovery of money sums due and payable under the terms of the lease. Still less was any evidence provided to show that the expense was reasonably incurred and reasonable in amount.
16. In these circumstances, we have determined that this sum was not payable pursuant to clause 5.9.3 of the lease.
17. £ 302.40 Invoice 22.06.2016 issued by LMP Law. A copy is at p234. This simply records: "*159 Chandlers Drive: M Adovar – SC/Breach – agreed fee for initial drafting of letters – RIV0019*". Included in the invoice are disbursements of £6 which appear to be Land Registry search fees.
18. The unsigned witness statement referred to above simply records: "*This charge is professional fees for Solicitors dealing with the Respondent's various breaches of lease and accusations made against the Applicant and their Directors. A copy of the invoice is attached.*"
19. For the same reasons set out in paragraphs 14- 15 above we have determined that this sum is not payable pursuant to clause 5.9.3 of the lease.

Statutory interest

20. The claim includes a claim to statutory interest. This is outside the jurisdiction of this tribunal hence we refer it back to the court for determination.
21. In case it may be of assistance to the court we draw attention to clause paragraph 6 of the Fifth Schedule to the lease which concerns the payment of the service charges and which defines 'Interest' to mean 4% above the base lending rate of Barclays Bank Plc.

Costs of the court proceedings

20. Again, this claim is outside the jurisdiction of this tribunal and hence we refer it back to the court for determination.

Section 20C application

21. Whilst reference was made to a section 20C application in the directions, Mr Fianyo-Adovar was not aware he had made such an application.
21. In a general discussion on the implications concerning section 20C, Mr Gibson observed that paragraph 8.4.2 of the Fifth Schedule to the lease would permit the applicant to pass its reasonable costs of these proceedings through the service charge account.
22. Following this general discussion, Mr Fianyo-Adovar said that he did not wish to make an application pursuant to s20C to prevent the applicant from passing its costs through the service charge account.

Judge John Hewitt
8 September 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.